

BEST AVAILABLE COPY**REMARKS**

This Amendment is in response to the Office Action mailed on May 24, 2006.

Claims 1-13 remain pending.

§112 Paragraph 2 Rejections:

Claims 1-7 were rejected as being indefinite. This rejection is traversed. The Examiner cites the terms "decides" and "deciding" recited in lines 11, 16, 20 and 28 of claim 1 as being indefinite because the limitations suggest that the measuring equipment make conscious choices in its actions. Applicants note that the terms "decides" and "deciding" are used several times in the patent specification. The terms are found, for example, on page 2, line 35-page 3, line 14; page 3, lines 31-34; page 5, lines 21-33; page 6, lines 22-27; page 6, line 27-page 7, line 8; page 7, lines 22-32; page 19, lines 17-20; and page 32, lines 3-15. Based on these instances, which are consistent in their usage, it is apparent that the terms "decides" and "deciding" as used in the context of the present invention do not imply conscious choices by the measuring equipment, but merely the following of predetermined protocols.

Applicants also refer the Examiner to the Merriam-Webster dictionary found on the internet at <http://www.m-w.com/>, which under definition 1b of the term "decide" recites "to select as a course of action." This definition does not turn upon the presence of action based on a conscious choice. The use of "decide" in the present application is perfectly consistent with this definition found in a well known dictionary. Thus, Applicants respectfully submit that claims 1-7 are definite and the rejection should be withdrawn.

103(a) Rejections:

Claims 1-6 were rejected as being obvious over Hammer, et al. (US Pub. No. 2001/0051377 A1) in view of Kalra, et al. (US Patent No. 5,948,359). This rejection is traversed. Regarding claim 1, the prior art provides no motivation to combine the Hammer and Kalra references.

Claim 1 is directed to a measuring equipment that requires, among other features, an operation control means and a carrier identification means. The operation control

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means decides whether a cartridge container is a special-purpose cartridge container or a general-purpose cartridge container when a carrier identification means decides if an information carrier respectively is or is not attached to the cartridge container. The operation control means conducts a particular measurement based on whether the cartridge container is a special-purpose or general-purpose container.

The rejection relies on Kalra for a carrier identification means to decide if an information carrier is or is not attached to the cartridge carrier in use with a operational control means that conducts a measurement based on whether the cartridge container has an attached information carrier, indicating a special-purpose container, or not, indicating a general-purpose container. However, Kalra discloses an apparatus for automating the application of staining reagents to samples comprising a computer that, when any bar-code is not properly read, or missing, is capable of identifying which slide is "missing". A menu on the computer screen informs the user to manually input the missing information or to re-run the scanning procedure, (see col. 17, lines 10-15).

There is no reasonable motivation for combining Kalra with Hammer. An advantage of the present invention is to provide a means to conduct a measurement for cartridges that intentionally do not have an attached information carrier that is distinct from a means to conduct a measurement for cartridges that do attach an information carrier. In contrast, as noted by the Examiner, Kalra merely provides means to prevent automated processing of cartridges when cartridges have missing or corrupt bar codes. Kalra does not contemplate providing means for conducting measurements on cartridges that intentionally lack an information carrier, as the purpose of Kalra is to remedy cartridges with missing or corrupt bar codes. Thus, it would not be obvious for one skilled in the art to glean these features of claim 1 from the combination of Hammer and Kalra. For at least these reasons claim 1 is patentable. Claims 2-6 depend from claim 1 and should also be allowable for at least these reasons.

Moreover, neither Hammer nor Kalra teach or suggest all of the features of claim 2. Claim 2 requires that the information carrier is an optically readable carrier, and optical read means is disposed in means for transferring liquid between the vessels of the cartridge container. Neither Hammer nor Kalra teaches or suggests such a feature for an information carrier. Although claim 2 is not addressed specifically in the Office Action,

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from the previous Office Action it appears that bar code reader 200 of Hammer is considered relevant to claim 2. However the bar code reader 200 is in no way associated with liquid transfer therefore is not relevant to claim 2.

Claim 7 was rejected as being obvious over Hammer, et al. (US Pub. No. 2001/0051377 A1) in view of Peterson, et al. (U.S. Pub. No. 2001/0012612 A1). Applicants assume that Kalra was intended to be included in this rejection. However, claim 7 depends from claim 1, and is allowable for at least the same reasons discussed above. Applicants do not concede the correctness of the rejection.

Conclusion:

Applicant respectfully asserts claims 1-7 are in condition for allowance. Accordingly, claims 8-13 should be reinstated for allowance with the elected claims. If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicants' primary attorney-of record, Douglas P. Mueller (Reg. No. 30,300), at (612) 455-3804.



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Respectfully submitted,

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